



CITY OF LODI COUNCIL COMMUNICATION

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AGENDA TITLE: Authorize City Manager to Execute Agreement with InfoSend, Inc. (Fullerton, CA) for Online Payment Services (est. \$35,000/year – ISD)

MEETING DATE: March 5, 2008

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute agreement with InfoSend, Inc. (Fullerton, CA) for online payment services (est. \$35,000/year).

BACKGROUND INFORMATION: The City currently accepts utility payments in person at the Finance counter, via U.S. mail, and from a drop-off box in front of the Finance office. These payment methods are considered insufficient in today's environment of high technology and 24-hour customer service expectations. Staff is currently looking at expanding payment venues, including online payments, as part of the City's commitment to improved customer service and satisfaction.

The City has explored the option of Internet payments for the past several years; however, legal issues have stalled this initiative until now. At issue is a Canadian company that claims to own patent rights to a particular aspect of online utility payment processing. On advice from the City Attorney, staff has not proceeded with a recommendation while the matter is being litigated. Although the legal issues remain unsettled, staff has located a vendor who comes highly recommended, is extremely price competitive and is willing to indemnify the City of Lodi from any action taken by Telus Corporation for perceived violations of the so called "362" Patent.

Staff recommends InfoSend, Inc. because of their competitive fee structure, favorable references, turnkey technology, and their willingness to indemnify the City against any patent infringement allegations as referenced above.

This is a hosted service, meaning customers will click on a link that will redirect them to the InfoSend website. Customers will generally be unaware of this because it will look exactly like the City's website. People who wish to take advantage of the online payments feature will be required to enroll, providing basic customer information. This information is kept by the vendor, not the City. Once enrolled, people will be able to view their bill and make an online payment. Bills will be viewable for up to one year.

Enrolled customers will have a choice of payment methods, including credit card, debit card or through Automated Clearing House (ACH). They can also enroll in monthly automatic payments, or manual on demand payments. Customers may also choose to stop receiving printed statements and have their bills sent via email, or this can be done by default.

The City may also choose to have newsletters or flyers available on the payment site. This service is free if the City supplies a .PDF formatted file, or \$100 per page for other formats.

APPROVED: _____
Blair King, City Manager

Survey of Vendors:

Over the years staff has reviewed several online payment vendors and their respective cost structures. Here is a summary of other vendors' transaction fees:

Vendor	ACH	Credit Cards	Setup Fee
Officialpayments.com:	\$3 per transaction	3% of bill (about \$5.70)	None
InfoSend*	.25 per transaction	\$1.07/transaction (prox)	\$4,995
Alliance Data Systems	\$3 per transaction	2% plus 15 cents	\$10,000 – \$50,000

**Recommended vendor*

Staff checked InfoSend references and received favorable feedback. The City of Roseville was one of the first InfoSend clients in California. Roseville's contact gave InfoSend very high marks. Indeed, Roseville enjoys very high customer response to their online payment service, about 15 percent. The industry standard is reportedly about half that.

System Highlights:

- An online portal is created and integrated to the City's existing website that includes customer enrollment screens, bill viewer pages (one page for a consolidated invoice list and one page for detailed invoice viewing), payment initiation and history screens. A custom payment file format is created which facilitates the daily transfer of payment information to the City's A/R staff for accounts receivable reconciliation.
- The portal will be customized to look like the City's website. A user database will reside on InfoSend's servers, but customers will go to the City's website to login. This process is transparent to customers.
- Online bills are formatted to look similar to regular paper invoices.
- Customers may receive their entire invoice in full color via email. Login is only necessary to initiate a payment. Customers whose email clients do not support HTML email will see a plaintext email. A quick login will display the online bill.
- Industry-standard security methods are used to protect financial data. Internet servers are separated onto different networks in a "three-tier" architecture to safeguard data.
- Customers have the ability to pay via credit card or ACH (Automated Clearing House).

Summary of benefits

In addition to the City's desire to enhance customer service, following is a list of likely benefits to offering online payments:

- Reduced staff time at Finance counter
- Web-based; no special software to purchase
- 24 x 7 customer convenience
- Up to 12 months of bill history available to customers online
- Payments are transferred electronically; City system updated automatically
- Reduces paper bills being printed and sent, saving the City money
- Customers can setup auto pay

- Customers can use a variety of payment methods
- 24 x 7 technical support available
- Secure transactions
- Customers save postage
- Reduction in phone calls to Finance for balance information
- Reduction in staff time to process checks received in the mail

Summary of Fees and Costs:

One Time Setup Fee	\$ 4,995
Monthly Maintenance Fee	\$ 175
Monthly Presentment and Storage Fee*	\$ 400
Off Line Payment History	\$ FREE
Credit card charges per transaction (estimated)	\$ 1.05
ACH charges per transaction	\$.25
Monthly fixed costs (estimated)	\$ 575
Estimated Monthly Transaction Costs**	\$ 2,100
Estimated Total Monthly Costs***	\$ 2,675

* Includes first 2,000 bills/invoices per month for enrolled users; 11 cents for each invoice over 2000

** Based on 2000 customer payments per month. Note: Actual monthly costs may be lower, depending upon customer response. Typical customer response is about 6 – 10 percent of total customers.

*** Based on 2000 customer payments per month @ \$1.05 transaction fee, plus fixed costs

Summary:

Staff recommends entering into an agreement with InfoSend, Inc. for online payment services. As the City endeavors to enhance customer service, allowing for online payments will likely reduce lines at the Finance window, increase payment processing efficiency and improve overall customer satisfaction. Introducing Internet payment options will also help meet growing customer expectations of 24 x 7 service delivery. Online bill presentment will also help reduce the number of customer telephone calls as clients can check account balances and review billing history via the Internet. Additional features may also be implemented in the future that will provide for electronic delivery of City newsletters and announcement literature. Finally, electronic bill presentment will help reduce postage and mailing costs.

FISCAL IMPACT: The City should anticipate annual costs of about \$35,000, depending upon customer enrollment and utilization of online payment service. The cost is likely to be significantly less.

Respectfully Submitted,

James R. Krueger
Deputy City Manager

Prepared by:
Steve Mann, Information Systems Manager

JK/SM



ELECTRONIC TRANSACTION PROCESSING AGREEMENT

This Agreement is made this _____ day of _____, _____, by and between, **COMPANY NAME**, a **STATE** corporation, with an address at **ADDRESS** ("Company") and **Phoenix Payment Systems, Inc.**, a Delaware corporation, (dba Electronic Payment Exchange) with an address at 650 Naamans Road, Suite 302, Wilmington, DE 19703 ("EPX").

Company wishes to initiate electronic debit transactions through EPX to bank accounts maintained by its customers. EPX will utilize the Automated Clearing House at the United States Federal Reserve ("Federal Reserve") in order to provide this service.

Now, therefore, in consideration of the promises contained herein, it is agreed as follows:

1. For purposes of this Agreement and the Schedules referred to herein, the following definitions apply unless the context otherwise requires. Capitalized terms used, but not defined, in this Agreement shall have the respective meanings as set forth in the NACHA Operating Rules.
 - A. NACHA – means the National Automated Clearing House Association that establishes the standards, rules and procedures (the "NACHA Operating Rules") that enable depository financial institutions to exchange payments on a national basis.
 - B. ACH – means Automated Clearing House Network, which is a funds transfer system, governed by the NACHA Operating Rules that provides for the interbank clearing of electronic entries for participating financial institutions.
 - C. Internet (WEB) Initiated Entries – means origination of debit entries (either recurring or single entry) to a consumer's bank account pursuant to Written Authorization that is obtained from the consumer via the Internet.
 - D. Written Authorization – for Internet (WEB) Initiated Entries, means that (1) consumer must be able to read the authorization language displayed on a computer screen or other visual display; (2) Company should prompt the consumer to print the authorization and retain a copy; and (3) Company must be able to provide the consumer with a hard copy if the authorization is requested.
 - E. Banking Day – means any day on which a participating financial depository institution is open to the public during any part of the day for carrying on substantially all its banking functions.
 - F. Settlement – means a transfer of funds between two parties in cash, or on the books of a mutual depository institution, to complete one or more prior transactions, made subject to final accounting. Settlement for the ACH system usually occurs through the Federal Reserve.
 - G. Settlement Date - means the date on which a transfer of funds with respect to a transaction is reflected on the books of the Federal Reserve.
2. EPX will transmit bank account entries initiated by Company to the ACH as provided in the NACHA Operating Rules. Settlement of bank account entries initiated by Company shall occur in one (1) Banking Day.
3. Company and EPX will comply with the NACHA Operating Rules insofar as applicable, and the applicable NACHA Operating Rules are incorporated into this Agreement by reference. EPX agrees to keep Company advised of NACHA Operating Rules as they are applied and updated by NACHA. The specific duties of Company and EPX provided in the following paragraphs of this Agreement in no way limit the foregoing undertaking.

Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to provide any services it intends to offer and that it is in compliance with the regulations of the Federal Trade Commission and the Federal Communications Commission and shall comply with all present and future federal, state and local laws and regulations pertaining to Transactions, including, without limitation, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act, the Federal Equal Credit Opportunity Act, as amended, and the Telephone Disclosure and Dispute Resolution Act, as applicable.

4. Company shall obtain all Consents and Authorizations (including without limitation Written Authorization for Internet (WEB) Initiated Entries) required under the NACHA Operating Rules and shall retain such Consents and Authorizations for two (2) years after they expire. Company shall bear the full liability for, and shall indemnify EPX from, ACH items returned by the consumer whose account was debited whether or not proper Consent and Authorization was obtained. In accordance with NACHA Operating Rules, EPX shall reject return items deemed "untimely" and shall dispute return items at Company's request. In no event, however, shall EPX be liable for Company's ACH return items.

Initials _____

5. Company shall transmit each ACH file to EPX, in accordance with EPX's rules and policies, no later than 6:30 P.M., Eastern Time one (1) Banking Day prior to the Settlement Date. Failure to do so may result in a delay in the availability of funds.
6. Company shall establish at EPX a reserve fund equal to at least Company's average four (4) day ACH gross dollar volume. EPX shall hold this reserve fund to offset returned ACH items and for other liabilities that Company may incur under this Agreement. If the amount of returned ACH items exceeds the balance in the refundable fee account, EPX shall fund the excess via the Merchant's operating account. Changes in reserve fund requirements will be determined by EPX according to Company's ACH gross dollar volume and Company's ACH return history; any such changes shall be effective immediately. Notwithstanding the reserve fund, Company shall be liable and reimburse EPX for any returned items. The reserve fund shall be funded, maintained and/or replenished by EPX withholding from remittances hereunder. EPX may hold any or all reserve funds for a period of up to one hundred-eighty (180) Banking Days following the termination of this Agreement by either party to offset returned or disputed ACH items or other liabilities under this Agreement. After such period, any amounts remaining in the reserve fund will be promptly returned to Company.
7. Company represents, warrants and covenants that Company will (1) advise EPX in writing of any errors in any ACH transactions submitted hereunder; (2) conduct Company's business in an ethical manner, in accordance with this Agreement, all applicable government rules and regulations and the NACHA Operating Rules; and (3) not use, or allow Company's employees or agents, to commit any acts of fraud, dishonesty or misrepresentation.
8. Company hereby indemnifies EPX against any claim, loss, damage, cost, expense, attorneys' fees and liability (collectively, "Claims") incurred by EPX or third parties on account of Company's breach of this Agreement or any representations, warranties or covenants herein, other than Claims arising from EPX's negligence or willful misconduct. If at any time EPX becomes aware of, or has reason to believe that EPX may have, a Claim for indemnification hereunder, EPX has the right to refuse transmittal, and/or hold all transferred funds for a period of up to one hundred-eighty (180) Banking Days.
9. Company will compensate EPX for providing the services referred to herein according to the EPX rate and fee schedule. EPX shall provide Company with thirty (30) days written notification of all rate and fee changes. If such a change occurs, Company has the right to terminate this Agreement upon written notice to EPX, provided that EPX actually receives such termination notice within thirty (30) days following the date of the increase notice. A copy of the current rate and fee Schedule is attached hereto.
10. Either party may terminate this Agreement upon at least thirty (30) days prior written notice to the other party in the event that a party is in material breach of this Agreement (including without limitation payment obligations), and such breach is not cured within such period. EPX may immediately terminate this Agreement, or suspend transmittal hereunder, without notice to Company under any of the below listed circumstances:
 - A. Based on financial information concerning Company obtained by EPX, Company poses an unsatisfactory financial risk, as determined by EPX;
 - B. Any act of fraud, dishonesty or misrepresentation is committed by Company, its employees and/or agents or EPX believes in good faith that Company, its employees and/or agents have committed, are committing or are planning to commit any acts of fraud, dishonesty or misrepresentation;
 - C. Any representation, warranty or application made by Company is not true and correct in all material respects;
 - D. Company files a petition, or has a petition filed against it under any bankruptcy or insolvency law, or is otherwise unable to pay its debts as they become due; or
 - E. Company fails to provide financial statements in a format reasonably acceptable to EPX within three (3) days of EPX's written request.
 - F. Company's reason entry codes for unauthorized transactions are equivalent to or exceed NACHA Operating Rules for reason entry codes pertaining to such transaction thresholds.
 - G. Company is not within the parameters set forth in the EPX Underwriting Terms and Conditions.

EPX may selectively terminate one or more of Company's approved locations without terminating this entire Agreement. In the event of termination, all obligations of Company incurred or existing under this Agreement prior to termination shall survive the termination.

Initials _____

11. In the event Company incurs any loss due to the mishandling of a particular file by EPX, EPX's liability to Company shall be limited to the actual direct damages incurred by it resulting from EPX's negligence or misconduct, and shall in no event exceed the amount represented by the applicable transaction record, less the fees payable to EPX under this Agreement. In addition, EPX, its affiliates and agents shall not be liable for any incidental, consequential, reliance or special damages in any way connected or arising out of this Agreement or the services provided hereunder. EPX HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
12. In the event an agent of Company delivers any entry or file of entries to EPX, EPX may act in reliance on such entry or file of entries, and it need not inquire of Company as to whether the agent is duly authorized. Company shall be fully liable for the acts and omissions of its agents hereunder.
13. This Agreement shall commence on the date first specified above and shall remain in effect for a period three (3) years. This Agreement shall automatically renew for successive one (1) year terms unless either party provides written non-renewal notice to the other at least ninety (90) days prior to the end of the then current term.
14. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Delaware without regard to its conflicts of law rules. The parties agree that any dispute arising out of and/or in the course of the relationship established by this Agreement, or by the Agreement itself, shall be decided, unless mutually resolved by the parties hereto, in the state and federal located in the State of Delaware, and, the parties hereby submit to said jurisdiction and venue.
15. In the event that any action is filed in relation to this Agreement or the relationship created hereby, the unsuccessful party in the action shall pay to the successful party, in addition to all sums awarded by the court, actual costs and expenses for the successful party's attorneys' fees.
16. All notices hereunder shall be in writing, in English, and shall be deemed properly given when (1) sent by certified mail, return receipt requested, (2) sent by fax with confirmation of receipt by telephone, or (3) delivered by a nationally recognized overnight delivery service, to the addresses listed herein for the respective parties. A party may change such address by written notice to the other party hereto in accordance with this section at least thirty (30) days prior to the initial use of the revised address.
17. If any provision of this Agreement or any application thereof to any person or circumstance shall be held to be invalid by a court of competent jurisdiction or unenforceable to any extent, the remainder of the Agreement and the application thereof to other persons or circumstances shall not be affected thereby and shall be limited or modified to the minimum extent necessary to be enforceable.
18. This Agreement may not be assigned by Company without the prior written consent of EPX. EPX may assign this Agreement without limitation. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
19. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing and signed by each party or an authorized representative of each party. This Agreement, together with the Schedules attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.
20. The undersigned hereby personally guarantees each and every obligation created by this Agreement. In the event Company fails to pay any fees, charges, ACH returns, fines or any other charges, the undersigned shall be personally responsible for payment, and if such payment is not made, EPX may seek a judgment against the undersigned in any court of competent jurisdiction.

Initials _____

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed by their duly authorized representatives, with a complete understanding of the contents hereof, on the day and year first set forth hereinabove.

Agreed and Accepted:

COMPANY NAME

Name, Title

Date

Phoenix Payment Systems, Inc.

Authorized Representative

Date

Pricing

Item Description	Fee
Set-up Fee	\$00.00
ACH Transactions	\$0.25
ACH Return/Reject Fee	\$0.45
Monthly Minimum	\$00.00



MERCHANT AGREEMENT

Phoenix Payment Systems, Inc. doing business as Electronic Payment Exchange, a Delaware Corporation, whose address is 650 Naamans Road, Suite 302, Claymont, DE 19703 (“EPX”), The Bancorp Bank (“Bank”), a Delaware Corporation, whose address is 405 Silverside Road, Suite 105, Wilmington, DE 19809 and COMPANY NAME, a STATE Corporation whose address is ADDRESS (“Merchant”), agree as follows:

1. **Definitions.** For the purposes of this Agreement and the Schedules referred to herein, the following definitions apply unless the context otherwise requires:
 - 1.1. “Address Verification” shall mean a service which allows Merchant to verify Cardholder’s billing address with Issuer.
 - 1.2. “Association(s)” shall mean VISA USA, Inc. and MasterCard International, Inc.
 - 1.3. “Authorization” shall mean an affirmative response by or on behalf of an Issuer, to a request to the EPX System to effect a Transaction, that a Transaction is within the Cardholder’s available credit limit and that the Cardholder has not reported the Card lost or stolen. All Transactions require Authorization.
 - 1.4. “Business Day” shall mean any day other than:
 - i. Saturday or Sunday;
 - ii. A day on which banking institutions in Delaware are authorized by law or executive order to be closed (and on which Bank and/or EPX is in fact closed); or
 - iii. A day on which the Federal Reserve Bank is closed.
 - 1.5. “Card(s)” shall mean either a Visa or MasterCard credit card or debit card.
 - 1.6. “Cardholder” shall mean a person authorized to use a Card.
 - 1.7. “Card-Not-Present” shall mean mail order, telephone order, e-commerce (Internet) order, or other transactions that are not Card-Present Transactions.
 - 1.8. “Card-Present Transaction” shall mean a Transaction in which the Card is swiped through a terminal, register or other device, capturing the Card information encoded on the magnetic strip.
 - 1.9. “Chargeback” shall mean a Transaction that Bank returns to Merchant pursuant to this Agreement.
 - 1.10. “CVV” shall mean a service which allows Merchant to verify Cardholder’s possession of Card through the identification of unique digits on Card.
 - 1.11. “EPX System(s)” shall mean payment processing platform.
 - 1.12. “Forced Sale” shall mean a sales Transaction processed without an approved electronic authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.
 - 1.13. “Issuer” shall mean an Association member that issued a Card to a Cardholder.
 - 1.14. “IVR” shall mean interactive voice response unit used for an Authorization.
 - 1.15. “Manuals” shall mean the EPX System and Software associated API guides, manuals and instructions.

- 1.16. “Merchant Servicer” shall mean non-members other than the Merchant and EPX that receive, pass, or store transaction data on their internal systems on behalf of the Merchant. This includes third party servicers, Web hosting companies, shopping cart providers, and media back-up companies. Merchant Servicers must be registered with Visa by Bank.
- 1.17. “Merchant Statement” shall mean an itemized monthly statement of all charges and credits to the Operating Account.
- 1.18. “Operating Account” shall mean a demand deposit account at Bank, or other approved financial institution through which fees, charges and credits due in accordance with this Agreement may be processed.
- 1.19. “Pre-Authorized Recurring Order Transactions” shall mean Transactions which have been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.
- 1.20. “Reserve Account” shall mean an account at Bank for all future liabilities of Merchant to Bank or EPX which may arise out of this Agreement.
- 1.21. “Services” shall mean the transaction processing services provided by Bank or EPX under this Agreement.
- 1.22. “Software” shall mean any software programs provided by EPX.
- 1.23. “Transaction” shall mean the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Merchant and receipt of payment from Bank, whether the transaction is approved, declined, or processed as a Forced Sale. “Transaction” also includes credits and voids.

2. Merchant Obligations and Requirements.

- 2.1. Merchant Card Processing. Merchant is in the business of selling and/or leasing goods and/or providing services to its customers. To better serve those customers, Merchant has requested and Bank and EPX has agreed to permit Merchant’s participation in the card processing programs and services. Without the prior written consent of Bank and EPX, Merchant is not authorized to process Transactions for payment for any other type of goods or services. Bank and EPX reserves the right to establish certain limits on volume of daily, weekly, and monthly transactions and dollar limits per Transaction which Merchant may process. Failure to follow these limits, which may be amended from time to time, will be a default under this Agreement. Merchant agrees to participate in the credit card processing services program established by Bank and EPX.
- 2.2. Merchant Account Changes. Merchant shall provide the information required by the Merchant Profile Setup Form provided to Merchant by EPX and shall promptly notify EPX of any changes in this information.
- 2.3. Merchant Operating Account. Prior to accepting any Cards, Merchant shall establish an Operating Account. Merchant authorizes Bank or EPX to debit all amounts Merchant owes Bank or EPX herein from the Operating Account, whether maintained at Bank or another financial institution, at times deemed appropriate by Bank or EPX through the ACH Banking Network or by a manual debit of the account. Merchant waives any claims for loss or damage arising out of any charges or debits to the Operating Account against Bank or any other financial institution where the Operating Account is maintained.

- 2.4. Reserve Account. Upon execution of this Agreement, Bank or EPX may establish a Reserve Account for all future liabilities of Merchant to Bank or EPX which may arise out of this Agreement, including, but not limited to, Chargebacks, fines and fees. Bank or EPX shall inform Merchant of the initial amount required for the Reserve Account at the commencement of this Agreement. The Bank or EPX may change the amount of the Reserve Account as reasonably necessary and Merchant shall be immediately notified of such change. The Reserve Account may be funded by deduction from payments due Merchant or a charge against Merchant's Operating Account or against any of Merchant's accounts at Bank. The Reserve Account will be maintained for a minimum of six (6) months from the termination date of this Agreement or until such time as Bank or EPX determines that the release of the funds to Merchant is prudent, commercially reasonable and Merchant's account with Bank and EPX is fully resolved. Upon expiration of this six (6) month period, any balance remaining in the Reserve Account will be paid to Merchant. Bank or EPX will inform Merchant in writing of any charges debited to the Reserve Account during this period.
- 2.5. Adjustments and Returns. Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, EPX shall fund the excess via Merchant's Reserve Account and/or Operating Account. Merchant shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this paragraph. If no refund or return will be given, Cardholder must be advised in writing that the sale is a "final sale" and "no returns" are permitted at the time of the Transaction. Cardholder also must be advised in writing of any no-cash refund policy, in store credit only. Merchant shall follow Association reservation/no-show policy. Merchant must notify Cardholders in writing of this policy on all advance reservations. The Cardholder must be notified at the time of the reservation of the exact number of days required for reservation deposit refunds.
- 2.6. Customer Complaints. Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. Bank and EPX reserve the right to charge Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:
- i. The Cardholder's name;
 - ii. A unique confirmation number (transaction sequence number, or other identifier) that the Merchant can use to reference the transaction in subsequent communications with the Bank or EPX;
 - iii. The date and time the Cardholder asserted the claim or defense;
 - iv. The nature of the claim or defense; and
 - v. The action which Merchant took in an attempt to resolve the dispute.

Upon request, Merchant shall furnish Bank with this information in writing within ten (10) days.

- 2.7. Auditing and Credit Investigation. Bank or EPX may audit Merchant's compliance with the terms of this Agreement. Merchant shall deliver such information within ten (10) days after Bank's or EPX's request, including without limitation, periodic financial statements and information pertaining to Merchant's financial condition, in a format reasonably acceptable to Bank and EPX. Such information shall be true, complete and accurate. Merchant authorizes parties contacted by Bank or EPX to release credit information requested by Bank or EPX and Merchant agrees to provide a separate authorization for release of credit information if requested.

- 2.8. Exclusivity. Merchant shall submit all Card Transactions for the particular entity, dba or web property processed by Bank and EPX during the term hereof solely to Bank and EPX for processing. If Merchant fails to comply with this provision, Merchant agrees to pay Bank or EPX, a liquidated damages sum within ten (10) days of the date of non compliance. The amount shall equal the greater of
- i. \$250; or
 - ii. 80% of the product of:
 1. The average net monthly fees; and
 2. The number of months, including any pro rata portion of a month, then remaining prior to the date on which Merchant may terminate this Agreement in accordance with its terms.

Merchant agrees that the damages suffered as a result of such non compliance would be extremely difficult to calculate with precision. For that reason, the parties hereto agree that the liquidated damages should be computed as set forth above. Any exceptions to this exclusive arrangement must be approved by Bank and EPX in advance in writing.

- 2.9. Retention of Original Sales Information. Merchant shall retain the information required by Paragraphs 9.1 (Documenting Transactions) and 9.2 (Authorization for Transactions) for three (3) years from the date of the Transaction. At the request of Bank or EPX, Merchant shall provide such information to Bank or EPX, as directed by Bank, within five (5) days of receipt of request. Failure to meet such time frame or non-delivery of any item or delivery of an illegible copy of an item requested by an Issuer shall constitute a waiver by Merchant of any claims and may result in an irrevocable Chargeback for the full amount of the Transaction.

- 2.10. EPX Systems. Merchant acknowledges that its use of the EPX Systems and Software is in accordance with the terms of the Manuals supplied by EPX and within the terms of the license granted by EPX, if such license is granted. Any Software supplied to Merchant by EPX is owned by EPX. It is licensed to Merchant and not sold. The Manuals are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Merchant is prohibited from copying the Software or Manuals related to the EPX System and Software. Merchant shall not sell, lease, encumber or otherwise dispose of the Software or Manuals. Merchant acknowledges that the EPX Systems and Software requires suitable computer hardware to function properly.

3. EPX Obligations and Requirements.

- 3.1. EPX to Provide Services to Merchant. During the term of this Agreement, subject to the terms and conditions of this Agreement, EPX agrees to provide EPX Systems, Software and Manuals in order to allow Merchant to accept and process Transactions. EPX shall provide EPX Systems technical support 24 hours per day, 7 days per week, in accordance with EPX's then-current policies. EPX shall provide customer support for all Merchant Transactions, including authorization, settlement, chargeback processing and reporting from 8:30 a.m. to 6:00 p.m. Eastern time, Monday through Friday, excluding EPX holidays, in accordance with EPX's then-current policies.
- 3.2. Data Connection. In the event Merchant requires the installation of a dedicated data connection for electronic transmissions to EPX, Merchant will sign a separate agreement, EPX Third Party Connection Agreement, which provides policy and guidelines for the use of network and computing resources associated with the data connection. Merchant shall make arrangements for such installation and the maintenance thereof with EPX. EPX shall coordinate the installation and maintenance of the dedicated data connection. Merchant shall pay EPX for all costs related to the installation and maintenance of the dedicated data connection.

4. Bank Obligations and Requirements.

- 4.1. Bank to Provide Services to Merchant. Bank agrees to sponsor Merchant's acceptance of Cards for Transactions. Bank and EPX, as applicable, agree to provide Merchant with the Services indicated on

Schedule A, as amended from time to time by Bank or EPX, during the term of this Agreement, subject to the terms and conditions of this Agreement.

4.2. Daily Reconciliation of Transactions.

- i. Electronically Transmitted Transactions. Transactions will be settled on a daily basis. Bank shall deliver payment to Merchant by a credit to the Operating Account equal to the reconciled summary of Merchant's total summary Transactions since the previous credit. This credit will be net of following charges:
 1. The sum of all Cardholder charges denied, refused or charged back;
 2. All refunds processed on account of Cardholders during said time period;
 3. All taxes, penalties, charges and other items incurred by Bank or EPX that are reimbursable pursuant to this Agreement; and
 4. All rates, fees and charges in Schedule B.
- ii. Provisional Credit. Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to chargeback by the Issuer, Cardholder or Associations. Bank may withhold payment for a Transaction to Merchant for at least one (1) but not more than ten (10) Business Days from the processing date of a Transaction.

4.3. Merchant Statement. Bank or EPX shall make available a Merchant Statement on a daily and month-end basis. All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within thirty (30) days of the date of the Merchant Statement. Delivery of the Merchant Statement shall be in electronic form.

4.4. Chargebacks. Bank shall be authorized to charge back to Merchant any Transactions as specified throughout this Agreement and/or under any of the following circumstances:

- i. Card-Not-Present Transactions;
- ii. As otherwise indicated in this Agreement, or
- iii. As follows:
 1. No specific prior authorization for the Transaction was obtained from the EPX System;
 2. The Transaction was based on a pre-authorization form and the Card on which the Authorization was based has been cancelled and Merchant was so notified prior to the Transaction;
 3. The Card giving rise to the Transaction was cancelled and prior to, or at the time of, the Transaction, Merchant received notice of the cancellation through the electronic terminal, in writing or otherwise;
 4. The Card expired prior to the date of the Transaction or the date of Transaction was prior to the validation date, if any, indicated on the Card;
 5. The information required in Paragraphs 9.1 (Documenting Transactions) and 9.2.iii (Card-Not-Present Transactions) was not submitted to Bank;
 6. Bank or Issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder;
 7. The Cardholder makes a written complaint to Bank or Issuer that the Cardholder did not make or authorize the Transaction;
 8. A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in a Transaction;
 9. The Transaction was made at or by a Merchant other than Merchant named in this Agreement;
 10. The Transaction otherwise violates the terms of this Agreement or any other Association or Issuer bylaw, rule, regulation, policy or guideline;
 11. A Transaction is charged back by an Issuer; or

12. Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect.

In any such case, Bank shall not be obligated to accept a Transaction for credit to the Operating Account. If Bank has credited the Operating Account or Reserve Account for such a Transaction, Bank may return the Transaction to the Merchant, and Bank shall recover the amount of the Transaction from either aforementioned account. Merchant agrees that Bank, without prior notice to Merchant, may:

1. Charge the amount of the Transaction to the Operating Account or Reserve Account;
2. Recoup the amount of the Transaction by adjustment of the credits due to Merchant; or
3. Set off the amount of the Transaction against any account or property Bank holds for or on behalf of Merchant.

If Merchant disagrees with Chargeback Transaction, Merchant must so notify Bank in writing within ten (10) days of the Chargeback, and provide documentation that the dispute has been resolved to Cardholder's satisfaction or proof that a credit has been issued.

5. Compliance.

- 5.1. Associations' and Issuers' Requirements. Merchant shall comply with all bylaws, rules, regulations, policies and guidelines of the Associations and any Issuer whose Cards are used to process Transactions in accordance with this Agreement. EPX agrees to keep Merchant advised of Association rules and regulations as they are applied.
- 5.2. Use of Marks. Merchant will display prominently at its place of business Card emblems and other promotional material and literature provided by Bank directly or through EPX. Subject to the prior written consent of Bank and upon such conditions as authorized by Bank, Merchant may use Card service marks or design marks in its own advertisement and promotional materials.
- 5.3. Payment Card Industry Security Requirements. Merchant agrees to be PCI compliant, as amended by the Associations from time to time.
 - i. Visa and MasterCard have implemented a program to ensure the protection of cardholder data, whether processed or stored, through a program of validation and compliance. Known as PCI, information about the program and specific requirements can be obtained at www.visa.com/cisp. The program is comprised of 12 major requirements:
 1. Install and maintain a firewall configuration to protect data
 2. Do not use vendor-supplied defaults for system passwords and other security parameters
 3. Protect stored data
 4. Encrypt transmission of cardholder data and sensitive information across public networks
 5. Use and regularly update anti-virus software
 6. Develop and maintain secure systems and applications
 7. Restrict access to data by business need-to-know
 8. Assign a unique ID to each person with computer access
 9. Restrict physical access to cardholder data
 10. Track and monitor all access to network resources and cardholder data
 11. Regularly test security systems and processes
 12. Maintain a policy that addresses information security
 - ii. In the event of a security intrusion, Merchant agrees to fully cooperate with a third party approved Payment Card Industry assessor and/or representative to conduct a thorough security review and validate compliance with the Payment Card Industry Data Security Standards (PCI) for protecting Cardholder data;
 - iii. Merchant is responsible for security of Cardholder data in possession;
 - iv. Bank, EPX, Merchant and each payment card brand have ownership of Cardholder data and may use such data ONLY for assisting these parties in the completion of Transactions, supporting a loyalty program, providing fraud control services, or for other uses specifically required by law;

- v. In the event this Agreement is terminated by any of the parties, each party agrees to continue to treat account holder data as confidential;
- vi. Immediately notify Visa USA Risk Management, through its acquirer, of the use of a Merchant Servicer; and
- vii. Ensure the Merchant Servicer implements and maintains all of the security requirements, as specified in the PCI program.

5.4. Use of EPX Systems. Use of software programs approved by EPX and related equipment installed or improved by EPX for use with the EPX System, will be subject to the following:

- i. Merchant will use and operate the EPX Systems only in accordance with Manuals, as amended from time to time by EPX;
- ii. If Merchant is using EPX-provided software, Merchant will install, use and operate the Software only in accordance with the Manuals, as amended from time to time by EPX;
- iii. In processing Transactions, Merchant shall use only software programs, file formats and processing methods that have been approved and certified by EPX's Integration staff; and
- iv. Merchant shall be responsible for the custody and control of all passwords provided by EPX to Merchant to access the EPX reporting system.

5.5. Compliance with Applicable Law. Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to provide any services it intends to offer and that it is in compliance with the regulations of the Federal Trade Commission and the Federal Communications Commission and shall comply with all present and future federal, state and local laws and regulations pertaining to Transactions, including, without limitation, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act, the Federal Equal Credit Opportunity Act, as amended, and the Telephone Disclosure and Dispute Resolution Act, as applicable.

5.6. Web Site Requirements for E-Commerce Merchants. A web site operated by the Merchant that accepts Card Transactions must contain all of the following information:

- i. Complete description of the services offered;
- ii. Return merchandise and refund policy; which includes the communication of the return policy during the order process and the requirement that the cardholder must be allowed to select a "click to accept" option of other affirmative button to acknowledge the policy;
- iii. Terms and conditions must be displayed on the same screen view as the checkout screen used to present the total purchase amount; or
- iv. Within the sequence of web pages the cardholder accesses during the checkout process.
- v. Customer service contact including e-mail address or telephone number;
- vi. Transaction currency;
- vii. Export or legal restrictions;
- viii. Delivery policy;
- ix. Consumer data privacy policy;
- x. The security method offered for transmission of payment data such as Secure Sockets Layer or 3-D Secure; and
- xi. Address of the Merchant outlet's permanent establishment, including the Merchant outlet country;
 - 13. On the same screen view as the checkout screen used to present the total purchase amount; or
 - 14. Within the sequence of web pages the Cardholder accesses during the checkout process.

6. Term.

6.1. Term. This Agreement shall become effective when signed by all parties and, unless sooner terminated in accordance with this Agreement, shall remain in effect for a term of five (5) years. This Agreement shall renew automatically for successive terms of two (2) years each, unless any party provides written notice of termination to the other parties at least 120 days prior to the end of the then current term. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into

before such termination shall remain in full force and effect and Merchant shall remain liable for all obligations to Cardholders, Bank, and EPX incurred while this Agreement was in effect.

- 6.2. Termination of Agreement by Bank or EPX. Bank or EPX may terminate this Agreement upon thirty (30) days prior written notice to Merchant under any of the below listed circumstances. During this period the Merchant shall have the opportunity to cure the default.
- i. Chargebacks exceed the Association guidelines, or appear to be the result of fraudulent Transactions as defined by the Association. EPX will provide Merchant with information defining the Association guidelines;
 - ii. Breach of this Agreement by Merchant; or
 - iii. Merchant fails to provide accurate financial statements suitable to Bank or EPX in a timely manner upon request.

Bank and/or EPX may terminate this Agreement immediately, in the following circumstances:

- i. In the opinion of Bank or EPX there is a substantial negative change in the Merchant's business or financial position;
- ii. Any act of fraud or dishonesty is committed by Merchant, its employees and/or agents, or Bank or EPX believes in good faith that Merchant, its employees and/or agents have committed, are committing or are planning to commit any acts of fraud or misrepresentation in connection with transaction processing;
- iii. Any representation or warranty made by Merchant in this Agreement or the Application for Services herein that is not true and correct, in a material respect;
- iv. Merchant fails to maintain sufficient funds in the Operating Account to cover the amounts due to Bank or EPX herein; or
- v. Merchant files a petition under any bankruptcy or insolvency law.

Bank or EPX may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement.

In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the transaction date of the card Transaction.

- 6.3. Termination of Agreement by Bank. If the Bank's management, board of directors or legal counsel determines that the continued performance by the Bank of its obligations under this Agreement is not consistent with safe and sound banking practices and if the parties are unable to agree upon modifications to this Agreement that eliminate the relevant banking concerns or cure the violation or potential violation of said banking practices, the Bank shall have the right to terminate this Agreement on not less than ninety (90) days' prior written notice by providing written notice to Merchant. Any written notice provided to Merchant by the Bank pursuant to this section shall specify the date on which this Agreement shall terminate, which date shall be selected by the Bank in an effort to provide to Merchant as much advance notice of such termination as is reasonably practicable, consistent with safe and sound banking practices.
- 6.4. Termination of Agreement by Merchant. Merchant may terminate this Agreement upon at least thirty (30) days prior written notice to the other parties if:
- i. Bank or EPX amends Schedule B pursuant to Paragraph 10.16.ii (Amendment to Fees and Charges) to increase the rates, fees or charges Merchant pays herein in excess of 5% in any given contract year, except for increases in Association fees or rates, or rates raised in accordance with Paragraph 10.16.iii (Volume Adjustments);
 - ii. Any material amendment or modification to this Agreement made by Bank or EPX that adversely affects Merchant in a material respect (excluding material amendments or modifications required due to changes in Association Regulations or applicable federal, state or local law or regulation); or

- iii. Bank or EPX materially breaches a material provision of this Agreement and fails to cure such breach within such thirty (30) day period. Bank is not obligated to provide replacement Services if EPX does not or cannot perform.

Merchant's right to terminate pursuant to this Paragraph 6.4.i or 6.4.ii shall expire thirty (30) days following the receipt of notice to any such increase or material amendment of modification.

7. Merchant Billing.

- 7.1. Fees. Merchant shall pay all fees, including, but not limited to monthly service fees, Chargebacks and set-up fees as specified on and in accordance with Schedule B, as amended by Bank and EPX. Bank and EPX shall provide the Merchant with reasonable notification of all fee or rate changes, including any Association fee or rate changes. Merchant also agrees to pay Bank or EPX the amount of any fees, charges or penalties assessed against Bank or EPX by any Association or Issuer for Merchant's violation of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such parties.
- 7.2. Taxes. Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If excise, sale or use taxes are imposed on the Transactions, Merchant shall be responsible for the collection and payment thereof. If Bank or EPX funds any taxes, interest, fine or penalties that are the responsibility of the Merchant, Bank or EPX shall be immediately charged to the Operating Account or Reserve Account or recouped by adjustment of any credits due to Merchant.
- 7.3. Billing. All amounts Merchant owes Bank and EPX may be charged to the Operating Account or Reserve Account or recouped by adjustment of any credits due to Merchant.

8. Liability and Indemnification.

- 8.1. Conversion. Bank will have no liability to Merchant if any conversion is delayed or cannot be completed. EPX will not have liability to Merchant if any conversion is delayed or cannot be completed unless due to the gross negligence of EPX;
- 8.2. EPX System. EPX will have no liability to Merchant if the EPX System or Software fails to operate because of:
 - i. Merchant's inappropriate, inadequate or faulty computer hardware;
 - ii. The failure of Merchant, its employees or agents to operate the EPX System or Software properly in accordance with the instructions provided by EPX; or
 - iii. The neglect or misuse of the EPX System or Software by Merchant, its employees or agents.

If the EPX System or Software fails to operate for any other reason not attributable to Merchant, the liability of EPX shall be limited as set forth in the applicable license agreement for the Software. Bank shall have no liability to Merchant for the EPX System or Software.

- 8.3. Limitation of Liability. Neither Bank nor EPX shall be liable to Merchant or Merchant's customers or any other person for any of the following:
 - i. Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so;
 - ii. Any loss caused by a Transaction downgrade resulting from defective or faulty software regardless if owned by Bank, EPX or Merchant;
 - iii. The unavailability of Services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Bank, EPX or any other person for any reason; or
 - iv. Interruption or termination of any Services caused by any reason except for the gross negligence of EPX; and in such case, any liability shall be solely that of EPX and the liability of EPX shall be limited to a full or partial waiver of terminal or Software fees due under this Agreement.

- 8.4. Limitation on Damages. In no case shall Merchant be entitled to recover damages from EPX or Bank which exceed the fees retained by Bank and EPX pursuant to this Agreement during the one (1) month period immediately prior to the event giving rise to the claim for damages.
- 8.5. Indemnification. Merchant agrees to indemnify and hold Bank and EPX harmless from any and all losses, claims, damages, liabilities and expenses, including attorneys' fees and costs (whether or not an attorney is an employee of or affiliates, Bank or Bank's affiliates or EPX or EPX's affiliates) arising out of any of the following:
- i. Merchant's failure to comply with this Agreement;
 - ii. Any act or omission of Merchant;
 - iii. Merchant's failure to comply with the Manuals;
 - iv. Merchant's failure to comply with any bylaw, rule, regulation, guideline or policy of any Association or Issuer;
 - v. Merchant's failure to comply with any applicable law, rule or regulation;
 - vi. Any Cardholder dispute concerning the quality, condition or delivery of any Merchant merchandise or the quality of performance of any Merchant service;
 - vii. The fraud or dishonesty of Merchant or Merchant's employees, licensees, successors, agents and/or assigns;
 - viii. Merchant's selection of an Internet service provider or other telecommunication services provider;
 - ix. The theft of, misuse of, damage to or destruction of any Software; or
 - x. Card-Not-Present Transactions, unauthorized Transactions or prohibited Transactions.

NEITHER BANK NOR EPX SHALL BE LIABLE FOR ANY PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK OR EPX PURSUANT TO THIS AGREEMENT.

MERCHANT ACKNOWLEDGES THAT NEITHER BANK NOR EPX HAS PROVIDED ANY WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE, WITH RESPECT TO ANY SOFTWARE INSTALLED OR PROVIDED BY EPX. BANK HAS NO LIABILITY WITH RESPECT TO ANY SOFTWARE. NEITHER BANK NOR EPX MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREIN. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S OR EPX'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, BANK'S AND EPX'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALY REASONABLE.

9. Collection and Use of Transaction Information.

- 9.1. Documenting Transactions. Merchant shall submit the following information to Bank in connection with Transaction processing:
- i. The DBA name of Merchant, name of Merchant and Merchant's address;
 - ii. Merchant customer service telephone number;
 - iii. Merchant Internet address;
 - iv. Merchant Number assigned by Bank;
 - v. The Card account number, validation date and/or expiration date of the Card, if one appears on the Card;
 - vi. Name, address and telephone number of Cardholder; and
 - vii. Such additional information as may be required by Bank, EPX and/or the Associations, from time to time.

Merchant shall not submit a Transaction to Bank (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction. Merchant must not transmit a Transaction

to Bank that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Merchant is responsible for its employees' actions. Merchant may transmit a Transaction which effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder's specifications, if Merchant advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Associations.

9.2. Authorization for Transactions. Merchant shall obtain Authorization of Transactions as follows:

- i. Electronically Transmitted Transaction. Merchant shall submit each Transaction for Authorization to the EPX System. The EPX System shall respond with the Issuer's authorize or decline to a Transaction transmitted for Authorization and shall capture and process for Merchant the information relating to the Transaction.
- ii. Card-Present Transactions. The following additional requirement applies to Card-Present Transactions: If a terminal or software application is inoperable at the time of an Authorization request, the Transaction may be manually authorized. In that case, the Transaction shall be entered as a Forced Sale, provided the approval number is also entered, and Merchant shall be subject to an additional IVR authorization fee as outlined in Schedule B.
- iii. Card-Not-Present Transactions. The following additional requirements apply to Card-Not-Present Transactions:
 1. All Card-Not-Present Transactions are at Merchant's risk. As to each, Card-Not-Present Transactions Merchant warrants to Bank that the person whose name is submitted to Bank as Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Bank may charge back the Transaction to Merchant. If Bank charges back the Transaction to Merchant, Merchant shall pay Bank the amount of the Transaction, any Chargeback fee in Schedule B, plus any Association fine or assessment. Bank may charge the Transaction to the Operating Account or Reserve Account without prior notice to Merchant;
 2. All Card-Not-Present Transactions must be electronically authorized and, in addition to the information required in Paragraph 9.1 (Documenting Transactions), also shall indicate: an authorization code, if required; customer address and address verification; and in lieu of Cardholder's signature, a notation of (a) mail order, (b) telephone order, (c) e-commerce order, or (d) pre-authorized order, on the signature line;
 3. If Merchant accepts a Pre-Authorized Recurring Order Transaction, the Cardholder shall execute and deliver to Merchant a written request for this pre-authorization. This written request shall be maintained by Merchant and made available upon request to Bank. All annual billings must be reaffirmed at least once a year. Merchant shall not deliver goods or perform services covered by a Pre-Authorized Recurring Order Transaction after receiving notification from the Cardholder that the pre-authorization is cancelled or from Bank that the Card covering the Pre-Authorized Recurring Order Transaction is not to be honored; and
 4. Merchant shall verify Cardholder's address from the Association network. For telephone or mail order sales, Merchant shall transmit a ticket/invoice number and shall perform Address Verification and only accept as approved those Transactions receiving at least a partial match or system unavailable response.

9.3. Prohibited Transactions. Merchant shall not do any of the following with respect to any Transaction:

- i. Impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment;
- ii. Charge a Cardholder more than the amount the Cardholder would pay if payment were made by cash or check;
- iii. Establish a minimum or maximum dollar Transaction amount;
- iv. Obtain multiple authorizations for amounts less than the total credit sale amount;
- v. Obtain authorization for purposes of setting aside Cardholder's credit line for use in future sales;
- vi. Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;

- vii. Transmit or accept for payment any Transaction which was not originated directly between Merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in Merchant's application for card processing services initially submitted to and approved by Bank;
- viii. Honor or accept a Card as payment for any legal services or expenses arising out of or related to (1) the defense of any crime other than a traffic violation; (2) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (3) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
- ix. Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;
- x. Redeposit a previously charged Transaction, regardless of whether Cardholder consents;
- xi. Initiate a Transaction credit without a balance in the Operating Account equal to the credit;
- xii. Use the EPX System or Software and any data received thereon for any other purpose except for determining whether or not Merchant should accept Cards in connection with a current sale or lease of goods or services;
- xiii. Use the EPX System or Software and data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
- xiv. Draw or convey any inference concerning a person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card is processed as non-accepted;
- xv. Disclose any information obtained through the EPX System or Software to any person except for necessary disclosures to affected Cardholders, Bank, EPX and/or the Issuer;
- xvi. Add any tax to Transactions unless applicable law expressly requires that Merchant collect such a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;
- xvii. Disburse funds in the form of traveler's checks, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;
- xviii. Disburse funds in the form of cash, except:
 - 1. In the case of a cashback Transaction and in such case the cashback portion of the Transaction is the only portion disbursed as cash; or
 - 2. Merchant is dispensing funds in the form of traveler's checks, Visa TravelMoney Cards or foreign currency. In this case, the Transaction amount is limited to the value of said form of dispensation plus any fee or commission charged to the Merchant.
- xix. Accept a Card to collect or refinance an existing debt;
- xx. Issue a Transaction credit for return goods or services acquired in a cash transaction;
- xxi. Make any cash refund to a Cardholder who has made a purchase with a Card. All Transaction credits will be issued to the same Card account number as the sale;
- xxii. Require a Cardholder to complete a postcard or similar device that includes the Card's account number, Card expiration date, signature or any other Card account data in plain view when mailed; or
- xxiii. Accept Visa Card or Visa Electron Card for the purchase of scrip.

9.4. Disclosure and Storage of Transaction Information.

- i. A Merchant must not disclose a Card account number, personal information, or other Transaction information to third parties other than to Merchant Servicers, the Bank, or EPX for the sole purpose of:
 - 1. Assisting the Merchant in completing the transaction; or
 - 2. As specifically required by law.
 - 3. Merchant may only disclose Transaction information to approved third parties for the sole purpose of:
 - a. Supporting a loyalty program; or
 - b. Providing fraud control services.

- ii. A Merchant must store all material containing Card account numbers or imprints (such as transaction receipts, car rental agreements and carbons) in an area limited to selected personnel and:
 - 1. Render all data unreadable prior to discarding;
 - 2. The Merchant must not retain or store full contents of any track on the magnetic stripe subsequent to a Transaction;
 - 3. The Merchant must not retain or store CVV data subsequent to Authorization of a Transaction;
 - 4. The Merchant must not request the CVV data on any paper form.
 - iii. The sale or disclosure of databases containing cardholder account numbers, personal information, or other Card transaction information to third parties is prohibited.
- 9.5. Use and Disclosure of BIN Information. A Merchant that receives BIN information from Bank or EPX must not use such information for any reason other than to identify Visa debit category products at the point of sale, unless authorized by Visa.

10. General Provisions.

- 10.1. Confidentiality. Merchant shall treat all information received in connection with this Agreement as confidential. Merchant shall prevent the disclosure of this information except for necessary disclosures to affected Cardholders, to Bank, to EPX and to Issuers.
- 10.2. Independent Contractor. In the performance of its duties herein, each party shall be an independent contractor, not an employee or agent of another party.
- 10.3. Cooperation. In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the matters contemplated by this Agreement.
- 10.4. Entire Agreement. This Agreement, together with the Schedules attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.
- 10.5. Assignment. This Agreement may not be assigned by Merchant without the prior written consent of Bank and EPX. Bank and/or EPX may assign this Agreement without limitation. Assignment of this Agreement by Bank or EPX shall relieve such party of any further obligations under this Agreement.
- 10.6. Captions. Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.
- 10.7. Financial Accommodations. Bank, EPX and Merchant intend this Agreement to be construed as a contract to extend financial accommodations for the benefit of Merchant.
- 10.8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware, without regard to internal principles of conflict of laws, and federal law.
- 10.9. Power of Attorney. Merchant appoints Bank and EPX as its attorneys-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. The appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank or EPX.
- 10.10. Attorney's Fees. If Bank or EPX takes legal action against Merchant for any Chargebacks or any amounts due Bank or EPX herein, Merchant shall pay the costs and attorneys' fees incurred by Bank and/or EPX, whether suit is commenced or not.

- 10.11. Setoff. In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, Bank and/or EPX may set off any amounts due to Bank and/or EPX under this Agreement against any property of Merchant in the possession or control of Bank or EPX.
- 10.12. No Waiver. Any delay, waiver or omission by a party to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the other party. All remedies afforded by this Agreement for a breach hereof shall be cumulative.
- 10.13. Waiver. To the extent that Merchant becomes a debtor under any chapter of title 11 of the United States Code and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Bank or EPX for relief from the automatic stay of 11 U.S.C. § 362(a) to enforce any of Bank's or EPX's rights or claims under this Agreement.
- 10.14. Force Majeure. The parties shall be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.
- 10.15. Severability. If any provisions of this Agreement shall be held, or deemed to be, or shall, in fact, be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or paragraphs herein contained shall not affect the remaining portions of this Agreement or any part hereof.
- 10.16. Amendments to this Agreement. From time to time Bank and/or EPX may amend this Agreement as follows:
- i. Amendment to Cards and/or Services. Bank and/or EPX may amend or delete Cards or Services listed in Schedule A by notifying Merchant in writing of any amendment. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Bank or EPX shall notify Merchant of the fees to be charged for processing the additional Cards and Services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new Service after Bank or EPX has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions.
 - ii. Amendment to Fees and Charges. From time to time, Bank and/or EPX may change all rates, fees and charges set forth in Schedule B. Bank or EPX will provide written notice to Merchant of all amendments. Notice may be given on the Merchant Statement. All new rates, fees and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement unless Merchant terminates this Agreement in accordance with Paragraph 6.4 ("Termination of Agreement by Merchant").
 - iii. Volume Adjustments. Bank or EPX may change the rates, fees and charges without prior written notice if Merchant's sales volume or average Transaction amount does not meet Merchant's projections contained in Merchant's application for card processing services initially submitted to and approved by Bank and EPX.
- 10.17. Notices. Except for notices provided by Bank to Merchant on the Merchant Statement, all notices, requests, demands or other instruments which may or are required to be given by any party herein shall be in writing and each shall be deemed to have been properly given
- i. When served personally on an officer of the party to whom such notice is to be given;

- ii. Upon expiration of a period of three (3) Business Days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt; or
- iii. Upon delivery by a nationally recognized overnight delivery service, addressed as follows:

If to Bank:
The Bancorp Bank
 405 Silverside Rd.
 Suite 105
 Wilmington, DE 19809

If to EPX:
Electronic Payment Exchange
 650 Naamans Rd.
 Suite 302
 Claymont, DE 19703

If to Merchant:
 COMPANY NAME
 COMPANY ADDRESS

Any party may change the address to which subsequent notices are to be sent by notice to the others given as aforementioned.

By signing below, the parties agree to the terms of this Agreement. If Merchant is a corporation, its proper corporate officers sign. This Agreement may be signed in one or more counterparts and all signed agreements shall be considered as one.

Agreed to and accepted on: _____, 200__.



The Bancorp Bank

Merchant
 COMPANY NAME

By: _____
 Authorized Representative

By: _____
 Name, Title

Title: _____

By: _____
 Name, Title



Electronic Payment Exchange

By: _____
 Authorized Representative

Title: _____

SCHEDULE A
CARDS, SERVICES AND EQUIPMENT/SOFTWARE

1. Cards Available to Merchant.

1.1. Bank and EPX currently provides Card services from the following card issuers: Visa and MasterCard transaction processing services. EPX also provides authorization services for American Express, Diners Club, JCB and Discover.

2. Services Available to Merchant.

2.1. As of the date of this Agreement, Merchant has requested use of the following services:

- i. Authorization services for Visa, MasterCard, American Express, Diners Club, JCB and Discover Card
- ii. Transaction processing services for Visa and MasterCard
- iii. Cardholder Address Verification

2.2. The services provided by the EPX System will be available to Merchant 24 hours a day, 7 days a week. Every effort will be made to keep the system operational except for normal maintenance, which will normally occur during off peak hours. The telephone number of the IVR is 866-660-7065.

3. Access Methods.

3.1. EPX shall provide the following access method(s) to Merchant:

- i. HTTPS Post
- ii. SSL Streamed Socket
- iii. Batch File via SFTP
- iv. Dial-up
- v. IVR

SCHEDULE B
RATES, FEES AND CHARGES

1. “Mid-Qualified Transactions” shall mean (i) key-entered retail Transactions, (ii) Visa telephone or mail Transactions without Address Verification; any MasterCard telephone or mail Transaction, or (iii) any Transaction designated as such by the processor listed on Schedule A.
2. “Non-Qualified Transactions” shall mean (i) any Transaction submitted for processing more than 48 hours past the time the Authorization occurred, (ii) any Transaction missing required data, or (iii) any Transaction designated as such by the processor listed on Schedule A.
3. “Qualified Transactions” shall mean (i) retail transactions in which the Card is swiped, (ii) Visa telephone or mail Transactions with Address Verification, or (iii) Transactions that are part of a special registered program approved by the Associations, or (iv) e-commerce Transactions which CVV2 and AVS processing requirements are transmitted and sent within 48 hours of Authorization.
4. IVR authorization fees for CP.

Note: Add AVS Only Fees.

EPX Item type	Processing Fee or Fee
Merchant Account Statement Fee	\$15.00/mth
Pinless debit (Debit cards offer the convenience of paying out of a checking account for the customer and the advantage to you that they are authorized and cleared immediately like a credit card as opposed to going through the ACH with a 48 clear like a check)	Residential: \$0.55 + \$0.25 per transaction- the EPX system will automatically route debit transactions based on dollar amount to the debit networks or the credit card networks to obtain the rate that is most favorable to the City. Commercial: \$2.00 + \$0.25 per transaction
Credit Card Transactions (Visa & masterCard)	
1. Utility Discount Rate Transactions- Residential	\$0.75 + Assessment pass through (currently 9.25 (visa) or 9.5 basis points (M/C) as set by CC companies + \$0.25 EPX fee
2. Utility Discount Rate Transactions- Commercial	\$1.50 + Assessment pass through (currently 9.25 (visa) or 9.5 basis points (M/C) as set by CC companies + \$0.25 EPX fee
3. Non-Qualifying transactions CC	Straight Visa or MasterCard Interchange & Assessment fee pass through + 25 basis points from EPX

Note: The Visa and MasterCard fees are subject to change by the card companies themselves. These changes are beyond the control of either EPX or InfoSend. Changes generally are done in April and October of every year and may move fees down, up, or keep them stable.

COMPANY NAME
CERTIFICATE

I, _____, the duly elected, qualified and acting _____ of _____, a _____ (the "Company"), do hereby certify as follows:

1. The following resolutions were duly adopted by the board of directors / managing member(s) / general partners (circle one) of the Company:

WHEREAS, the Company desires to enter into a Merchant Agreement (the "Merchant Agreement") with The Bancorp Bank a Delaware corporation ("Bank") and Phoenix Payment Systems, Inc. dba Electronic Payment Exchange, a Delaware corporation ("EPX"), a copy of which Merchant Agreement is attached hereto as Exhibit "A";

WHEREAS, pursuant to the terms of the Merchant Agreement, Bank and EPX will provide certain credit card financing and processing for VISA and/or MASTERCARD credit card purchases made by the Company's customers;

WHEREAS, pursuant to the terms of the Merchant Agreement, (a) the Company may be required to establish a Reserve Account (as defined in the Merchant Agreement) and (b) Bank may require the Company to direct certain funds relating to credit card purchases to such Reserve Account;

WHEREAS, pursuant to the terms of the Merchant Agreement, Bank may require the Company to execute instruments evidencing Bank's security interest in the Operating Account (as defined in the Merchant Agreement) and Reserve Account; and

WHEREAS, pursuant to the terms of the Merchant Agreement, the Company is required to comply with strict requirements concerning the processing of credit card transactions and the sale of the Company's products.

NOW, THEREFORE, BE IT RESOLVED, that the Merchant Agreement by and among the Company, Bank and EPX, pursuant to which Bank and EPX shall act as the Company's exclusive provider of VISA and/or MASTERCARD credit card financing and processing services, is hereby approved and adopted in the form attached to these resolutions, together with such additions, changes or modifications as may be deemed necessary, advisable or appropriate by the officer(s) executing or causing the same to be completed; and

RESOLVED FURTHER, that in connection with the Merchant Agreement, the appropriate officer(s) of the Company is/are hereby authorized to establish (a) an Operating Account into which funds from credit card sales by the Company will be directed, and (b) if necessary, a Reserve Account into which funds from credit card sales by the Company may be directed by Bank in accordance with the provisions of the Merchant Agreement;

RESOLVED FURTHER, that the appropriate officer(s) of the Company is/are hereby authorized to enter into such additional agreements, and take such additional actions as may be reasonably required by Bank or EPX in connection with the Merchant Agreement; and

RESOLVED FURTHER, that the Secretary/managing member/general partner (circle one) of the Company is hereby authorized to deliver to Bank and EPX a Certificate (i) identifying the officers of the Company, (ii) verifying the signatures of such officers, and (iii) certifying a copy of these resolutions, and Bank and EPX are hereby authorized to rely upon such Certificate until formally advised by a like certificate of any changes therein, and is hereby authorized to rely on any such additional certificates.

2. Each person listed below (an "Officer") holds the office in the Company indicated opposite his or her name on the date hereof, (ii) the signature appearing opposite his or her name is the genuine signature of each such Officer, (iii) each such Officer, acting individually, is authorized to execute and deliver the Merchant

Agreement and each of the agreements and documents contemplated by the Merchant Agreement (collectively, the "Transaction Documents") on behalf of the Company, and (iv) each such Officer, acting individually, is authorized to perform the Company's obligations under the Transaction Documents on behalf of the Company:

Name Officer Signature

Name Officer Signature

Name Officer Signature

IN WITNESS WHEREOF, I have executed this Certificate this ____ day of _____, 200__.

Name

Title

PERSONAL GUARANTY

In this Agreement, the words "I," "me" or "mine" mean all who sign below as Guarantor(s); the words "you or your" mean The Bancorp Bank and Electronic Payment Exchange, and the word "Merchant" means Company Name.

By signing below, I unconditionally guarantee to you all obligations of Merchant identified above including all promises and covenants of Merchant, and all amounts due by Merchant, including interest, costs and other expenses, such as attorneys' fees and court costs, arising under a Merchant Agreement between Merchant and you dated _____, 200__ and amendments thereto. This means that you can demand performance or payment from me if Merchant fails to perform any obligation or pay what Merchant owes under the Agreement. I agree that my liability under this guaranty will not be limited or cancelled because (1) the Agreement cannot be enforced against Merchant; (2) you agree to changes in the terms of the Agreement; (3) you release Merchant or any other guarantor of Merchant's Agreement; (4) a law, regulation, or order of any public authority affects your rights under the Agreement; and/or (5) anything else happens that may affect your rights against Merchant or any other guarantor.

I further agree that (a) you can delay enforcing any of your rights under this guaranty without losing them; (b) that you can demand payment from me without first seeking payment from Merchant or any other guarantor; and (c) that I will pay all court costs, attorneys' fees and collection costs incurred by you in connection with enforcement of the Agreement and this guaranty, whether or not there is a lawsuit, and such additional fees and costs as may be directed by a court.

Agreed to and accepted on the date noted below.

Name

_____, 200__
Date

Witness

Witness



eBilling Proposal for the City of Lodi

February 19, 2008

Proposal Provided By:

J. D. McNaul
Sales Manager, e-Correspondence Solutions
InfoSend, Inc.
1041 S. Placentia Ave
Fullerton, CA 92831-5105
(303) 706-9226
www.infosend.com
jd.mcnaul@infosend.com

The information in this proposal is confidential and is not to be used or disclosed except to the recipient's employees, officers and agents engaged in evaluating this proposal. This proposal is valid for 45 days after the date of submittal.

eBilling Service Description

Set-up:	InfoSend creates a custom export routine to transfer your print billing data to a hosted system that presents data in the HTML format. An online portal is created and integrated to your existing website that includes customer enrollment screens, bill viewer pages (one page for a consolidated invoice list and one page for detailed invoice viewing), payment initiation and history screens. A custom payment file format is created which facilitates the daily transfer of payment information to your A/R staff for accounts receivable reconciliation.
Portal Look:	The portal will be customized to look like your website. A user database will reside on InfoSend's servers, but customers will go to your website to login. This process will be transparent to your customers.
Processing:	Each data file will be processed for printing and online presentment. Payments will be processed by one of InfoSend's payment partners.
Bill Format:	Online bills can be formatted to look similar to paper invoices.
Email Delivery:	Mimic paper mail delivery by emailing your customers their entire invoice in full color . Login is only necessary to initiate a payment. Customers whose email clients do not support HTML email will see a plain-text email. A quick login will display the online bill.
Security:	Industry-standard security methods are used to protect financial data. Internet servers are separated onto different networks in a "three-tier" architecture to safeguard data.
ACH:	ACH payments are withdrawn from a customer's checking account and typically cost much less to process than credit card payments. Payments take less time to clear than paper checks.
Credit Card:	You can also elect to give your customers the ability to pay via credit card. CVV verification used.

Benefits of Using InfoSend's e-Billing Service

- You will be able to offer online invoicing to your customers, without having to hire additional information technology staff or purchase additional computer equipment. Only minimal operational tasks are required by your IT staff to offer online billing.
- You will give your customers access to an enterprise E-Billing system, without having to invest a large amount of capital into software licensing and installation fees.
- Customer service will be greatly improved. Customers will be able to pay invoices from work, minimize paper clutter, and initiate payments with ease. Additionally, customers will "self-service" their own accounts enrolling through your website, maintaining their own email address and delivery preferences thereby reducing the effort and load on your internal staff, and historic invoices will be available to them as are current outstanding invoices reducing customer service calls to your internal staff.
- Check processing costs will be lowered as it will not be necessary to process paper payments for those customers who utilize the online bill payment. Credit card payments, via an online system, are generally at a lower price point as well.
- You will have the ability to securely email invoices to your customers as well as posting them online via your website. This will offer new choices for customer service and billing, raising customer satisfaction since your customers will be able to choose their own method of interaction with City of Lodi.

Schedule of e-Billing Service Charges

The following prices are contingent upon the use of one of InfoSend's online payment processors. Using other processors is possible but can incur additional fees as noted below. InfoSend can and will recommend a payment processor based on our research on behalf of the City to obtain the lowest quote from our partners.

InfoSend's Fees - Electronic Bill Presentment		
One Time Setup Fee	\$4,995.00	One time fee. Includes custom portal design that includes customer enrollment screens, bill viewer pages (one page for a consolidated invoice list and one page for detailed invoice viewing), one City of Lodi invoice template design, one City of Lodi "new invoice available" email template design, payment initiation and on line payment history screens, testing, customer support training and documentation. Includes setting up payment integration to EPX for batch ACH payment processing and real time credit card processing. Set up to a non-InfoSend payment processor, see below.
Maintenance Fee	\$175.00/mth	Per month. Application monitoring, maintenance, upgrades as they are incorporated into system, and minor text edits to web pages or email templates. Also includes ability to upload new image files to add or change an advertising GIF on the online bill on a monthly basis. Includes use of an existing InfoSend payment processor. Note: additional monthly maintenance fees as noted below can apply if you require that InfoSend use your current payment processor. Please submit their API documentation to allow our technical team to estimate the impact on your monthly maintenance fee.
Enrolled only package : Presentment and Storage Fee – 12 Months of Bill Retention for bills for enrolled customers only	\$400.00/mth Includes up to the first 2,000 enrolled bills/invoices per month for enrolled users only, \$0.11 per invoice over 2,000	Enrolled Users only loaded each month. Only enrolled user bills/invoices will be presented each month for enrolled users only, Customers will be able to view and pay their current bill during the next billing cycle after enrolling for the service. Historical invoices will be available to customer for 12 months; this will build over the initial 12 months of service. Includes basic email alerts – for example email notifying a customer when an invoice is available to be viewed (or the invoice itself can be put in this email) and payment receipt emails.
Off Line Payment History (included)	Included in monthly maintenance, normal \$1,200 set up is waived	The City may give InfoSend an ASCII or XML file (at an interval of its choosing- daily, weekly, etc.) of payments made at other sources other than on line (check, IVR, phone, etc.) and InfoSend will merge those payment records into the payment history section of the EBPP solution so enrolled customers have an on line record of all payments made (offline or online) since they enrolled in the system against their account. InfoSend will work with the City to understand and help design the file that the City will give InfoSend to update this information.
Optional: One Time custom Payment Processor Set-Up fee for customer opted payment processor (not one of the processors that InfoSend already has API's written	~\$750.00	This would include integrating to an existing payment processor that City of Lodi already works with and that InfoSend does not have an API to at this point in a batch payment environment. Actual set up would be determined after work scope in looking at processor connection requirements, but should be within 10% of figure to left.

to)		
OPTIONS: Newsletters/Inserts/etc.		
HTML Set-up & configuration	\$100.00 per page	Configure and set up an HTML version of an electronic newsletter, "insert" for inclusion or presentment via the integrated portal. This fee can be waived if a PDF can be provided of the newsletter/insert to InfoSend by the City.
Presentment of Newsletter or insert	\$0.05 per enrolled user	This enables a customer to view a stored attachment or newsletter or other marketing piece that would have normally gone out in the paper bill. Newsletters and inserts will also be archived and available for viewing for 12 months.
Professional Services		
Programming Fee	\$130.00	Per hour. For customizations made to application over and above those items listed above and after go-live.

Payment Processing Fees (ACH via EPX)

ACH Processing		
ACH Debits and Credits per transaction	\$0.25	Includes routing number validation.
Returned Items (per item)	\$5.00	Includes any return for NOC, NSF, payment stopped etc. either the first or second time.
Re-presentation of a Returned Item	\$0.50	Optional. ACH debits are only attempted once by default.
Base Monthly Account Charge	\$15.00	Includes access to a website to monitor ACH transactions.

Credit cards can also be accepted (any that the City wants to accept). Fees for credit cards are negotiated between the city and EPX, InfoSend suggests strongly that the City look at instigating the Utility Discount Rate available to it for Utilities accepting credit card payments.

362 Patent Indemnifications

InfoSend will include language in the final contract indemnifying the City of Lodi from action taken by Telus Corporation for perceived violations of the so called "362" Patent.

Term of Contract

36 Months

The information in this proposal is confidential and is not to be used or disclosed except to the recipient's employees, officers and agents engaged in evaluating this proposal. This proposal is valid for 90 days after the date of submittal.



Electronic Payment Exchange
650 Naamans Rd, Suite 302, Wilmington, DE 19703

**Public Company
MERCHANT APPLICATION**

Toll-Free: (800) 581.5109
Local: (302) 246-3110
Fax: (302) 246.3111
www.epx.com

BUSINESS INFORMATION					
Legal Name of Business (please attach Articles of Incorporation or Formation)			DBA (Doing Business As) Name (please attach Fictitious Name Certificate)		
Address			Address		
City	State	Zip	City	State	Zip
E-Mail		Website Address www.	Stock Symbol	Federal Tax ID Number	
Business Phone	Fax Number		Contact Name	Contact Phone	

BUSINESS DESCRIPTION	
Type of Ownership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> LLC <input type="checkbox"/> Corporation <input type="checkbox"/> Non-Profit Organization (please attach 501-(c)(3))	
Describe Type of Business:	Do you currently accept VISA/MasterCard <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, please attach 3 most recent months statements)
Describe Specific Goods/Services Sold:	Have Merchant owners/principals ever been terminated from accepting Bankcards for this Business or any other Businesses? <input type="checkbox"/> Yes (If yes, please attach explanation) <input type="checkbox"/> No
	Number of Business Locations ____ Years In Business ____yrs ____mths
Are Good/Services Delivered at Time of Sale? <input type="checkbox"/> Yes <input type="checkbox"/> No	Average Percentage of Sales Returned: ____%
If no, Number of Days until Delivered: ____ Days	Number of Days items may be Returned for Credit: ____ Days

TRANSACTION TYPE					Percentage Credit Card ____%				Percentage ACH ____% (Please attach most recent ACH statement showing return statistics)			
Card Swipe	Manually Keyed	Phone/Mail Order	Internet	Total	Average Ticket	High Ticket	Annual Volume	Annual Transactions #				
%	%	%	%	= 100%	\$	\$	\$					
Transaction Description to Appear on Cardholder's Statement (Merchant name 23 characters in Length, including spaces):					Customer Service Telephone Number to Appear on Cardholder's Statement:							

REFERENCES		
Trade Reference	Contact	Phone
Trade Reference	Contact	Phone
Bank Reference	Contact	Phone

BANK INFORMATION – Please submit voided business check from a bank account where funds are to credited and fees are to be debited		
Bank Name	Bank Address	
Bank Phone Number	Checking Account Number	Routing/Transit Number

PAYMENT CARD INDUSTRY DATA SECURITY STANDARD (PCI Standard) – Please submit Certificate of Compliance and Self Assessment Questionnaire

By signing below, the Merchant named above: (1) certifies that all information and documents submitted in connection with this Application are correct to the best of your knowledge and (2) authorizes EPX and/or its Partners to receive business credit reports and any other information regarding Applicant from third parties, to verify any information provided on the Application.

By: _____ Title: _____ Date _____
(Officer or Authorized Representative)*

*Please attach a copy of signing Officer or Authorized Representative's driver's license

INFOSEND EBPP Service Agreement

This agreement made as of **March** ____, **2008** by and between **INFOSEND, Inc.** having its main office at 1041 S. Placentia Avenue, Fullerton, California 92831-5105 and **the City of Lodi**, "Client" or "City" having its main office at: 221 W. Pine St, Lodi, CA 95241

Section 1. Term of Agreement

The initial term of this agreement shall be a period of Thirty Six (36) months, commencing on the later of the dates executed below ("Initial Term"). This agreement shall continue for Subsequent Periods equal in duration to the Initial Term (Subject to Section 7) unless either party shall, at least 60 days prior to the end of the Initial Term or Subsequent Period, give written notice of termination, via certified mail.

Section 2. INFOSEND Service

InfoSend will provide Electronic Bill Presentment and Payment services.

Website development includes the following services:

- Enrollment, Presentment, and Payment Website Page design & Hosting
- Creation of web pages for INFOSEND's Standard EBPP Offering
- Testing and proofing of the payment web pages and EBPP Site
- On-going monthly maintenance of the EBPP service

INFOSEND will provide Client with a web based application that provides integration to a payment processor (Client's credit card clearing service), Standard offering EBPP functionality including customer enrollment pages and database creation, bill presentment pages and hosting, payment initiation enablement for customers, historical billing and on line payment retention, giving the customer the ability to print a bill from on line, and a CSR interface. Off line payment history is also included, pending the City's ability to give InfoSend a workable file of transactions.

Section 3. Confidentiality of Information

All information and data relating to Client's business submitted by Client to INFOSEND under this agreement shall be treated as confidential by INFOSEND and shall not, unless otherwise required by law, be disclosed to any third party by INFOSEND without Client's written consent.

Section 4. Limitation of Liability and Indemnification

INFOSEND will not be responsible for actions or omissions resulting from receiving data and/or following instructions received from Client. No damages shall be assessed against INFOSEND when any delay or breach on INFOSEND's part is caused by failure of Client to perform Clients' responsibilities or any other reason beyond the control of INFOSEND. INFOSEND is a service provider, as such, Client acknowledges that data processing involves the risk of human and machine errors and that INFOSEND shall not be liable for any errors, omissions, delays or losses. In no event shall INFOSEND be liable for indirect, special or inconsequential damages exceeding the total aggregate amount of transactional fees charged directly by INFOSEND relating to invoicing transactions as set for in the fee schedule at the end of this agreement that have been paid to INFOSEND before any action, even if INFOSEND has been advised of the possibility of such potential claim, loss or damage.

The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. Notwithstanding anything to the contrary contained herein, INFOSEND shall not be responsible for delays in receipt of client information or processing client information because of causes beyond its reasonable control, including without limitation, failures or limitations on the availability of third party

Client Initial _____ InfoSend Initial _____

telecommunications or other transmission facilities and Clients' failure to properly enter and/or transmit. Client may terminate service with no notice if INFOSEND fails to provide services on an on-going basis or in the case of the service causing significant errors, delays or losses to Client.

Section 5. Invoicing and Payment

INFOSEND will issue monthly invoices. Invoice terms are NET 10 days. 50% of the set-up fee is due upon completion of contract signing and the balance is due at go live date.

Section 6. Cost of Services

The following prices are contingent upon the use of one of INFOSEND's online payment processors. Using other processors is possible but can incur additional fees as noted below. 50% of the set-up fee is due upon completion of contract signing and the balance is due at go live date.

INFOSEND's Fees - Electronic Bill Presentment		
One Time Setup Fee	\$4,995.00	One time fee. Includes custom portal design that includes customer enrollment screens, bill viewer pages (one page for a consolidated invoice list and one page for detailed invoice viewing), one Lodi invoice template design, one Lodi "new invoice available" email template design, payment initiation and history screens, testing, customer support training and documentation. Includes setting up payment integration to one of INFOSEND's current payment processor partners for batch payment processing. Set up to a non-INFOSEND payment processor, see below.
Maintenance Fee	\$175.00/mth	Per month. Application monitoring, maintenance, upgrades as they are incorporated into system, and minor text edits to web pages or email templates. Also includes ability to upload new image files to add or change an advertising GIF on the online bill on a monthly basis. Includes use of an existing InfoSend payment processor. Note: This assumes that the City will be using EPX as the chosen payment processor. If another processor is chosen that InfoSend does NOT have a written API working currently, an additional charge of \$750.00 set up will be charged to develop the integration.
Enrolled only package : Presentment and Storage Fee – 12 Months of Bill Retention for bills for enrolled customers only	\$400.00/mth Includes up to the first 2,000 enrolled bills/invoices per month for enrolled users only, \$0.11 per invoice over	Enrolled Users only loaded each month. Only enrolled user bills/invoices will be presented each month for enrolled users only, Customers will be able to view and pay their current bill during the next billing cycle after enrolling for the service. Historical invoices will be available to customer for 12 months; this will build over the initial 12 months of service. Includes basic email alerts – for example email notifying a customer when an invoice is available to be viewed (or the invoice itself can be put in this email) and payment receipt emails.

Client Initial _____ InfoSend Initial _____

	2,000	
Off Line Payment History (included)	Included in monthly maintenance, normal \$1,200 set up is waived	The City may give InfoSend an ASCII or XML file (at an interval of its choosing- daily, weekly, etc.) of payments made at other sources other than on line (check, IVR, phone, etc.) and InfoSend will merge those payment records into the payment history section of the EBPP solution so enrolled customers have an on line record of all payments made (offline or online) since they enrolled in the system against their account. InfoSend will work with the City to understand and help design the file that the City will give InfoSend to update this information.
Optional: One Time Payment Processor Set-Up fee for customer opted payment processor	\$750.00	If another processor is chosen that InfoSend does NOT have a written API working currently, an additional charge of \$750.00 set up will be charged to develop the integration.

Newsletters/Inserts/etc.		
Optional: HTML Set-up & configuration	\$100.00 per page	Configure and set up an HTML version of an electronic newsletter, "insert" for inclusion or presentment via the integrated portal. This is if the City can't or won't give us the insert as a low size PDF file already and InfoSend need to do the work.
Optional: Presentment of Newsletter or insert via email to enrolled users	\$0.03 per enrolled user	This enables an enrolled customer to view a stored attachment or newsletter or other marketing piece as an attachment to a sent email.
Professional Services		
Programming Fee	\$130.00	Per hour. For customizations made to application over and above those items listed above and after go-live.

Payment Processing Fees

These fees will be priced separately from the presentment and alert fees above and are dependent upon separate contracts with EPX as the payment processor.

Section 7. Agreement Prices

The EBPP unit prices quoted shall remain firm for the initial three (3) year term of the agreement. After the initial term the cost of this service can increase. The maximum cost increase will be no more than 13% of the previous pricing in effect if there is any increase at all. The Client will be notified, in writing, at least 30 days prior to the new contract term if such price increase is implemented.

Section 8. Programming

Client Initial _____ InfoSend Initial _____

Once the initial service implementation is complete, the client can request additional programming. Occasional programming requests that require less than one hour of work are not assessed a programming fee, they are included in the monthly maintenance. Programming fees will apply should the programming requests become frequent or require more than one hour of programming per request. INFOSEND will provide an estimated programming timeframe and cost for these types of programming requests. Examples include but are not limited to: modifications to existing program(s), the addition of a new program or programs, and any software conversions resulting in a new client data format or change to the existing client data format. Upon receipt of the client's written approval, INFOSEND will provide a written scope of work for approval before proceeding with the work requested. The client will be invoiced at the current hourly programming fee. INFOSEND's current programming fee is \$130.00 per hour.

Section 9. "362" Patent

InfoSend agrees to providing indemnification to the City of Lodi from action taken by Telus Corporation for perceived violations of the so called "362" Patent.

Section 10. Miscellaneous

The substantive laws of the state of California shall govern this agreement. It constitutes the entire agreement between the parties with respect to the subject matter hereof. No representations and agreements modifying or supplementing the terms of this agreement will be valid unless in writing, signed by persons authorized to sign agreements on behalf of both parties. This agreement is not intended to, and shall not be construed to, create or confer any right in or upon any person or entity not a party to it.

CITY OF LODI

Name: _____
Title: _____
Signature: _____
Date: _____

INFOSEND, Inc.

Name: _____
Title: _____
Signature: _____
Date: _____

Client Initial _____ InfoSend Initial _____